

ORDINANCE NO. _____, SERIES 2010

AN ORDINANCE AMENDING ORDINANCE NO. 172, SERIES 2008 IN ORDER TO EFFECTUATE THE ISSUANCE OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT INDUSTRIAL REVENUE BONDS, SERIES B AND TAKING OTHER RELATED ACTIONS.

Sponsored by: Council Member Marianne Butler, District 15

WHEREAS, pursuant to Ordinance No. 172, Series 2008 (the "Ordinance") Louisville/Jefferson County Metro Council (the "Council") authorized the issuance and delivery of its Industrial Building Revenue Bonds, Series A (the "Industrial Building Revenue Bonds, Series A") the proceeds of which were used to acquire and construct a 366 unit apartment project at 620 Shipp Avenue designed for housing university students; and

WHEREAS, pursuant to the Ordinance there was also authorized the Louisville/Jefferson County Metro Government (the "Issuer") Industrial Building Revenue Bonds, Series B (the "Industrial Building Revenue Bonds, Series B") to be issued at a later time; and

WHEREAS, University Residences – Louisville LLC ("University Residences") now desires to proceed with Phase 2 of the multi-family housing units designed for university students with Phase 2 consisting of approximately 120 units; and

WHEREAS, in order to effectuate the execution and delivery of the Industrial Building Revenue Bonds, Series B, it is necessary that the Council authorize the execution and delivery of certain documents; and

WHEREAS, in order to effectuate Phase 2 it will be necessary for University Residences to obtain from the Issuer a portion of the property that was deeded to the Issuer pursuant to the Industrial Building Revenue Bonds, Series A, and in order to accomplish that a Deed and Bill of Sale will be required to be executed by the Issuer transferring such property back to University Residences; and

WHEREAS, University Residences shall simultaneously therewith deed such property back to the Issuer in order to effectuate the issuance of the Industrial Building Revenue Bonds Series B; and

WHEREAS, University Residences has requested that the Issuer ratify and confirm the authorization and delivery of the Industrial Building Revenue Bonds, Series B, by executing the necessary documents to effectuate the execution and delivery of the Industrial Building Revenue Bonds, Series B; and

WHEREAS, as part of this transaction, the University Residences Series A property is being refinanced through a Mortgage by Freddie Mac and, simultaneously therewith the project

is being assigned to a Louisville Properties I, LLC, a Delaware limited liability company, assignment having been authorized pursuant to the Lease and Financing Agreement dated as of October 1, 2008, between the Issuer and University Residences; and

WHEREAS, the new investor and Freddie Mac have requested that the Issuer enter into certain Estoppel Agreements and a Shared Use Agreement in order to protect the assignee of the Lease and the interests of the mortgagee; and

WHEREAS, in order to effectuate the issuance of the Industrial Building Revenue Bonds, Series B, the mortgaging of the property to Freddie Mac, the assignment of the Lease for both Series A and Series B property to Louisville Properties I, LLC and Louisville Properties II, LLC, respectively, it is necessary to authorize the execution and delivery by the Mayor and/or the Louisville Metro Clerk, of the following documents:

1. Lease and Financing Agreement for the Phase 2 property;
2. Bond Purchase Agreement for the Series B Bonds;
3. Deed transferring the Phase 2 property back to University Residences;
4. Bill of Sale transferring personal property for the Phase 2 property back to University Residences;
5. The Series B Industrial Building Revenue Bond;
6. A Payment in Lieu of Tax Agreement among University Residences, Jefferson County Public Schools and the Commonwealth of Kentucky with respect to the Phase 2 property;
7. Assignment and Assumption of Lease and Financing Agreement and Payment in Lieu of Tax Agreement for the Phase 1 property from University Residences to Louisville Properties I, LLC;
8. A Ground Lease Estoppel Certificate as required by the assignee of the Phase 1 property;
9. A Multifamily Ground Lease Estoppel Certificate as required by the new mortgagee, Freddie Mac;
10. A Shared Use Agreement between the new lessee for the Phase 1 property and the lessee for the Phase 2 property setting out the rights of each as it pertains to shared usage of easements for access and utilities;
11. An Amended Payment in Lieu of Tax Agreement requiring that the assignee of the Phase 1 property continue to make full tax payments to the Jefferson County Public School System and to the Commonwealth of Kentucky in *ad valorem* property tax;

12. The Deed transferring the Phase 2 property back to Louisville/Jefferson County Metro Government;
13. Assignment and Assumption of Lease and Financing Agreement and Payment in Lieu of Tax Agreement for the Phase 2 property from University Residences to Louisville Properties II, LLC.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

Section 1. That the representations in the preamble hereto are hereby found to be true and correct;

Section 2. That is determined that it is in the public benefit to permit the issuance of the Industrial Building Revenue Bonds, Series B in order to provide for an additional 120 apartment units designed for university students, such Industrial Building Revenue Bonds, Series B, to have the terms and to be in an amount not exceeding the amount set forth in Ordinance No. 172, Series 2008;

Section 3. That in order to effectuate the execution and delivery of the Industrial Building Revenue Bonds, Series B, the mortgaging of the Series A property to Freddie Mac, the assignment and assumption by the new investor with respect to both the Series A and Series B properties, and the Estoppel Certificates necessary and proper to protect the interests of Freddie Mac and the new investor, the Mayor and/or the Metro Council Clerk are hereby authorized to execute and deliver the following documents:

1. Lease and Financing Agreement for the Phase 2 property;
2. Bond Purchase Agreement for the Series B Bonds;
3. Deed transferring the Phase 2 property back to University Residences;
4. Bill of Sale transferring personal property for the Phase 2 property back to University Residences;
5. The Series B Industrial Building Revenue Bond;
6. A Payment in Lieu of Tax Agreement among University Residences, Jefferson County Public Schools and the Commonwealth of Kentucky with respect to the Phase 2 property;
7. Assignment and Assumption of Lease and Financing Agreement and Payment in Lieu of Tax Agreement for the Phase 1 property from University Residences to Louisville Properties I, LLC;
8. A Ground Lease Estoppel Certificate as required by the assignee of the

Phase 1 property;

9. A Multifamily Ground Lease Estoppel Certificate as required by the new mortgagee, Freddie Mac;
10. A Shared Use Agreement between the new lessee for the Phase 1 property and the lessee for the Phase 2 property setting out the rights of each as it pertains to shared usage of easements for access and utilities;
11. An Amended Payment in Lieu of Tax Agreement requiring that the assignee of the Phase 1 property continue to make full tax payments to the Jefferson County Public School System and to the Commonwealth of Kentucky in *ad valorem* property tax;
12. The Deed transferring the Phase 2 property back to Louisville/Jefferson County Metro Government; and
13. Assignment and Assumption of Lease and Financing Agreement and Payment in Lieu of Tax Agreement for the Phase 2 property from University Residences to Louisville Properties II, LLC (collectively, items 1-13 the “Documents”).

Section 4. **NEITHER THE BONDS NOR ANY OF THE DOCUMENTS SHALL CREATE ANY PECUNIARY LIABILITY ON THE PART OF THE METRO GOVERNMENT AND DO NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, A GENERAL OBLIGATION, INDEBTEDNESS OR LOAN OF CREDIT OF THE METRO GOVERNMENT. NEITHER THE GENERAL CREDIT NOR THE TAXING POWER OF THE METRO GOVERNMENT IS PLEDGED OR COMMITTED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS. THE BONDS AND ANY OBLIGATIONS UNDER ANY OF THE DOCUMENTS ARE PAYABLE SOLELY FROM THE REVENUES OF UNIVERSITY RESIDENCES AND/OR THEIR ASSIGNS AND SHALL CREATE NO DEBT OR LIABILITY ON THE PART OF THE METRO GOVERNMENT NOR THE COMMONWEALTH OF KENTUCKY.**

Section 5. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, or in any Bond, or in the Lease and Financing Agreements or the Bond Purchase Agreements, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of any Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to the owner or any

holder of any Bond, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Lease and Financing Agreements and the Bond Purchase Agreements and the issuance of the Bonds.

Section 6. The Mayor, the Metro Council Clerk and other officials are hereby authorized to execute and deliver any and all other documents necessary to effectuate the transactions contemplated above with the approval of the Jefferson County Attorney's office.

Section 7. Severability. The provisions of this ordinance are severable, and if any section, phrase or provision hereof shall for any reason be declared invalid or unenforceable, such declaration shall not affect the validity of the remainder of this ordinance.

Section 8. Effective Date. This amended Ordinance shall be in full force and effect from and after its enactment and publication as provided by law.

Kathleen J. Herron
Metro Council Clerk

Thomas L. Owen
President of the Council

Jerry E. Abramson
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY

Michael J. O'Connell
Jefferson County Attorney

By: _____
Assistant County Attorney

CERTIFICATE OF THE CLERK

I, Kathleen J. Herron, Metro Council Clerk, hereby certify that I am the duly qualified and acting Metro Council Clerk of the Louisville/Jefferson County Metro Government, that the foregoing Ordinance is a true copy of said Ordinance duly enacted by the Metro Council of said Metro Government, signed by the Mayor and President of the Council of said Metro Government, and attested under seal by me as Metro Council Clerk of the Metro Government, at a properly convened term and session of said Metro Council held on _____, 2010 as shown by the official records in my custody and under my control; that attached hereto are true copies of the documents approved therein, and that copies of such documents have also been duly filed and recorded in the official records of the Metro Government.

IN WITNESS WHEREOF, I have hereunder set my hand as Metro Council Clerk of the Louisville/Jefferson County Metro Government and the seal of the Metro Government this ____ day of _____, 2010.

Kathleen J. Herron, Clerk

[SEAL]

University Residences Amend Ord. 172, 2008 Skees ROC JC,bkn,acbEmerg.Draft4.DOC 4.8.10

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